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MAY 17 1940

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1014 81

DULUTH, MISSABE AND IRON RANGE RAILWAY
COMPANY, A CORPORATION,

Petitioner,

vs.

THOMAS HENRY ROSS, BY ADA ROSS, GENERAL
GUARDIAN.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNESOTA
AND BRIEF IN SUPPORT THEREOF.

CLARENCE J. HARTLEY,
DENNIS F. DONOVAN,
Counsel for Petitioner.

ELMER F. BLU,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully shows that it seeks herein a review by this Court of the final judgment of the Supreme Court of Minnesota, the Court of last resort of that State, affirming an order of the District Court of the Eleventh Judicial District, St. Louis County, Minnesota, reducing a verdict of the jury from \$18,500 to \$15,000, in respondent's action under the Federal Employers' Liability Act (35 Stat. 65, 45 U. S. C. A. 92) to recover damages for injuries sustained while employed by petitioner as a switchman in interstate commerce and attributed to a violation of the

Federal Safety Appliance Act (27 Stat. 531, 45 U. S. C. A. 15).

Summary Statement of the Matter Involved.

On June 30, 1936, respondent was a member of a switch crew sorting, selecting and classifying cars to be used in interstate commerce. Cars were being switched and shunted on different tracks for this purpose. Two of such cars in charge of respondent were uncoupled and shunted, but did not clear the "frog" due to an unintended application of air brakes. The foreman signaled the engineer to back the train against the two cars and without stopping continue until the entire train was in the clear. In executing the movement the train was slowly and cautiously moved against the two cars, resulting in a light and easy contacting of the cars. When the train stopped the two cars continued on with respondent thereon and during the process of stepping off his mackinaw jacket caught and jerked in such a manner as to tear a piece therefrom about a square foot in size and he fell. Within a matter of seconds respondent was on his feet again and took charge of the next train movement consisting of the pulling of the train of cars above the switch and dropping them on an adjoining track. He lost no time on account of the accident. On August 10, 1936, while partaking of dinner in his home, he fainted. On August 11, 1936, he was working on cars eighty feet above St. Louis Bay, and that night had another spell. Attended by the family physician he was hospitalized and his condition diagnosed as a stroke due to a blood clot in the brain arising out of profuse gastric hemorrhaging. Seven months after the accident he was declared insane, committed to a State hospital and he attributes his disability to the fall. Petitioner contends the disability is solely due to disease.

Respondent relies upon two causes of action arising out of employment "in interstate commerce". The first alleged

a "violation of the Federal Safety Appliance Law". The second is an action at common law.

Reasons Relied On for the Allowance of the Writ.

The Supreme Court of Minnesota has decided a Federal question of substance in a way not in accord with applicable decisions of this Court, and in that connection error is assigned on questions and reasons presented for the allowance of the writ as follows:

(1) The basis of the first cause of action is a slow train movement against two cars standing alone on a two per cent grade without brakes applied and with such lack of force when contact was made as not to effect a coupling, resulting in the Court's denying petitioner its defenses of contributory negligence and assumption of risk.

(2) The Court permitted the jury to speculate, in choosing between accident attributed to a violation of the Federal Safety Appliance Act and disease, on the question of proximate cause.

(3) The Court, over petitioner's objections, permitted introduction of incompetent and prejudicial evidence showing sickness, poor health and hospitalization of respondent's wife and her inability to do housework, all of which directly appealed to the sympathy of the jury in such a way as to beget a wholly wrong verdict and pervert the applicable Federal Acts.

(4) Allowing judgment to be entered on a verdict corrupted by appeal to sympathy, passion and prejudice and contrary to the principle that judgment may not be based on a verdict thus tainted.

WHEREFORE petitioner, referring to the attached brief in support of its reasons for review, respectfully prays that

this Court issue a writ of certiorari directed to the Supreme Court of Minnesota to certify and send to this Court a full and complete transcript of the record herein, to the end that the case may be reviewed and determined by this Court as provided by law, and that the decision of the Supreme Court of Minnesota may be reversed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray, etc.

DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY,
By CLARENCE J. HARTLEY,
DENNIS F. DONOVAN,
Counsel for Petitioner.

ELMER F. BLU,
Of Counsel.